IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 7143 OF 2002

T.Govindaseetharam ..Petitioner

-Vs-

The Chairman
Chennai Port Trust
Chennai-600 001 ..Respondent

Writ Petition is preferred under Art.226 of The Constitution of India seeking for a writ of certiorarified mandamus , as stated therein.

For petitioner:: Mr.R.Tholgappian

For respondents: Mr.R.Subbiah

:O R D E R

The writ petitioner has prayed for the issue of a writ of certiorarified mandamus calling for the records pertaining to memo dated 31.1 2.2001 bearing reference No.Estt(R)/2/18282/2001/A issued by the respondent and quash the same and permit the petitioner to retire in terms of the Special Voluntary Retirement Scheme, 1992, as contained in the Circular dated 8.3.2001 as revived and pass such further orders.

2. Heard Mr.R.Thogappian, learned counsel appearing for the petitioner and Mr.R.Subbiah, learned counsel appearing for the respondent. With the consent of counsel on either side the writ petition itself is taken up for final disposal.

3. The petitioner is working in the Accounts Department of the respondent Port Trust and his claim for promotion was not considered and ignored and therefore he has challenged his non promotion by filing W.P.No: 1667 of 1998 which has since been dismissed as withdrawn. On 8 .3.2001, the respondent revived the Special Voluntary Retirement Scheme introduced during the year 1992. According to the scheme all the officers in Class I, II and employees and workers in Class III and IV who have completed ten years of service or who have completed forty years of age are eligible to apply under the scheme. Such an application should be submitted on or before 31.3.2001

and the individual employee on acceptance has to retire on 30th June 2001. The petitioner submitted his application on 30th March 2001 which was kept pending. The petitioner reminded the respondent by letter dated 4.6.2001. On that, the respondent passed the impugned ord er on 12.7.2001, after the date fixed for retirement viz, 30.6.2001. By memo dated 12.7.2001, the respondent rejected the petitioner's request to retire under Special Voluntary Retirement Scheme, 1992 from the service of the respondent-Port rust without assigning any reason as prescribed under Part III(1) (iii) of the said Scheme. Challenging the same, the petitioner preferred W.P.No: 13724 of 2001. This court set aside the orders of rejection and directed the respondent to reconsider and pass appropriate orders on merits in accordance with the scheme while assigning reasons within a period of four weeks. It is pointed out that only justification suggested being that the petitioner's writ petition No.1667 of 1998 is pending. Once again by the impugned memo the request of the petitioner has been rejected. The order of rejection reads thus:-

"He is hereby informed that in view of the case pending in the court filed by him in W.P.No:1667/98, against the Chairman, Chennai Port Trust, FA & CAO, Chennai Port Trust, Secretary, MOST, New Delhi and five other officers of Accounts Department (Programmers/DPOs) and also for not withdrawing the writ petition filed by him, his request to retire voluntarily under the Special Voluntary Retirement Scheme, 1992 from the Trust's service has been rejected by the Chairman, Chennai Port Trust."

4. Challenging the above rejection the present writ petition has been filed.

5. It is contended that the order passed by the respondent is arbitrary, illegal and therefore liable to be quashed. That apart, pendency of the writ petition seeking certain promotion will not stand in the way of the respondent considering the petitioner's claim to avail the scheme of voluntary retirement, even if the petitioner is permitted to retire the claim for promotion, if any, will not survive and it is not as if such a petition or claim is going to affect the terminal benefits payable to the petitioner either on the date of acceptance of the voluntary retirement application or even on the normal date of superannuation.

6. Per contra, Mr.Subbiah, learned counsel appearing for the respondent contended that the pendency of the writ petition which the petitioner has failed to withdraw before the date has weighed with the respondent to pass the order as in terms of the scheme no proceedings shall be pending. It is also contended that the respondent has applied its mind, came to the conclusion that it is not in the interest of the Port Trust to permit the petitioner to retire and therefore the respondent has rightly declined the petitioner's request for voluntary retirement.

7. The very "Special Voluntary Retirement Scheme", in respect of which the petitioner has filed an application has already come to an end as on 30.6.2001. In fact one more scheme being made available and it is well open to the petitioner to take advantage of the scheme. The counsel for the petitioner is well founded in his contention as the pendency of the earlier

writ petition where the petitioner has challenged the non promotion cannot be a valid ground at all to reject the application.

8. Mr.R.Subbiah, learned counsel for the respondent contended that after the expiry of the scheme there cannot be any further direction permitting the petitioner to retire and this court will decline to issue a writ as prayed for. It is well settled that while accepting or rejecting the application for voluntary retirement under the scheme announced, the respondent should have exercised its discretion reasonably, fairly and judiciously. This is the settled legal position s laid down by the Supreme Court in Manjushree Pathak Vs. Assam Industrial Development Corporation Ltd., reported in 2000 (7)SCC 390.

9. In the said pronouncement, the Supreme Court held thus:-
"12.....On the date when the appellant submitted her application for voluntary retirement, neither vigilance inquiry nor any disciplinary proceedings were pending or contemplated. In other words, as per clause 5 she was not prevented from making an application to opt for voluntary retirement. The recommending authority as per clause 4 of the Scheme recommended for acceptance of the application on 7-12-1995 itself. We are unable to understand why the Managing Director of the respondent Corporation did not accept the same although it was required to be accepted with immediate effect as per para 2 of the prescribed application form. No doubt, as per clause 8.1 of the Scheme extracted above, the management had discretion to accept or reject the request from any employee for voluntary retirement viewing the organisational requirement and any other relevant facts but that does not mean that the respondent Corporation being an authority coming within the purview of Article 12 of the Constitution can abdicate its duty to act reasonably and fairly in exercise of discretion. It is strange as to why the Managing Director of the respondent Corporation, the competent authority to accept the

application made for the voluntary retirement, did not act on it at all till 17-2-1996. He ought to have exercised his discretion as per clause 8.1 if not immediately at least within a reasonable time...."

10. In the present case, there is no controversy that the petitioner has satisfied the requirements as per the scheme and there is no impediment at all to permit the petitioner to go on voluntary retirement under the scheme. The reason which prevailed with the respondent being pendency of the writ petition. This cannot be a valid ground as the pendency of the said writ petition relates to promotion and not for any other disciplinary proceedings or any other proceedings which will have a bearing with respect to the petitioner proceeding on voluntary retirement.

11. It is well settled legal position that unless the employee is relieved of the duty after acceptance of the offer of voluntary retirement or resignation, the jural relationship of the employer and employee does not come to an end.

12. In Shambu Murari Sinha Vs. Project Development India Ltd., reported in 2002 (3) SCC 437, the Apex Court held that the employee has locus

poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end and in that view the Apex Court held that the employee is entitled to be retained and he should be paid salary with all benefits. In the present case, the request has been rejected for the second time and the petitioner has come before this court challenging the same.

13. After the expiry of the Voluntary Retirement Scheme the important question that arises being Whether this court under Art.226 while questioning the impugned proceedings direct the respondent to permit the petitioner to proceed on Voluntary Retirement as per the Scheme that was in force.

14. Admittedly, the Voluntary Retirement Scheme has already come to an end and there is no VRS Scheme in force at all. That being the position, assuming for the purpose of argument that the respondent has rejected the petitioner's application for no valid reason, this court will not be justified in quashing the same and further issue a writ of mandamus as such a writ of mandamus would amount to compelling the respondent to enforce a scheme which is not in force. It may be that the parties should be put back to the original position. But at the time when the writ petition came before the court itself the Scheme has already come to an end. There is no scheme of Voluntary Retirement is in force as of today. It is now represented that another scheme is likely to be announced. It may be open to the petitioner to opt for VRS under the next scheme likely to be announced. As of today the VRS Scheme is not in force. The respondents cannot be compelled to permit the petitioner to proceed on voluntary retirement as the Scheme which enabled had already come to an end. The respondents cannot be compelled to accept the earlier offer of VRS after the expiry of the very Scheme.

15. However, in the present case, till the application for notice for voluntary retirement is accepted it will not be operative. Therefore, there is certain amount of discretion vested with the respondent-Port Trust and voluntary retirement after the notice will not come into force on the expiry of the notice period, nor it is possible after a lapse of the Scheme. In the present case, the retirement comes into force unless an order is passed during the notice period withholding permission to retire. On the facts, it is clear that unless specific permission is granted as per the scheme the voluntary retirement will not come into force and in such cases refusal could be ordered at any time.

15. In Tex Chand Vs. Dile Ram, reported In 2001 (3) SCC 290, the Apex Court pointed out that there are three categories of Rules relating to seeking of voluntary retirement after notice and they are:-
"35...In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules....."

16. In Power Corporation Ltd., Vs. Promod Kumar Bhatia Reported in 1997 (4) SCC 280 while considering the case of voluntary retirement, it has been laid down that unless the employee is relieved of the duty duty after acceptance of voluntary retirement or resignation, the jural relationship of employer and employee does not come to an end. The acceptance of voluntary retirement is a conditional one. In the present case such a condition of acceptance could no longer be exercised as the period for which the Scheme was in force has already come to an end. If mandamus is to be issued as of today it would result in compelling the respondent to frame new rules and notify the Scheme, which is beyond the power of Judicial Review.

17. In the circumstances, this court holds that even if the order impugned is liable to be interfered, this court declines to issue a mandamus directing the respondent to accept the petitioner's request for voluntary retirement as the Voluntary Retirement Scheme announced lapsed prior to petitioner approaching this court and VRS Scheme ceased to exist even as on date. Hence Writ petition is dismissed. No costs.

18. If a new Scheme is announced it will be well open to the petitioner to avail the benefit of such a scheme, if the petitioner so desires.

Internet: Yes
Index:Yes
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To

The Chairman
Chennai Port Trust
Chennai-600 001